

REMARKS

Claims 1-19 and 21 remain pending. Claim 18 has been deleted. Claim 35 has been added. Claims Applicant respectfully requests entry of the above amendment and reconsideration in view of the amendment and the following remarks.

Claims 1-11, 16-19 and 21 are rejected under 35 U.S.C. §103(a) as being unpatentable over Gies (4,862,933) in view of Olsson (5,799,464). Applicants respectfully traverse the rejection as follows.

Gies fails to teach or suggest the invention as claimed which *inter alia*, includes "...**aseptically** disinfecting the plurality of bottles" and "...**aseptically** filling...with the **aseptically** sterilized foodstuffs" as recited in the claims. Although Gies does use the term "sterilize", nowhere in Gies does it specifically use the term "aseptic" or "aseptical". This distinction is important because these terms clearly are not synonymous. The term "sterilize" is nowhere defined in Gies. "Sterilize" in Gies appears to mean the generic cleaning to some *indeterminate level* of cleanliness. In contrast, the term "aseptic", as discussed in the specification (see *inter alia* page 10), is a level of sterilization of a specific, measurable amount. As per the amendment (see above), this specific level of sterilization is clarified in the claims, "...to a level producing at least a 6 log reduction in spore organisms" (claim

1).

There is another feature of the claimed invention that distinguishes it over both Gies individually, and in combination with Olssen, and further in view of Poole. The invention as claimed in claim 13 provides for sterilizing the total bottle to a specific level of sterilization (i.e. both the inside and outside of the bottles). Claims 13 provides how the exterior of the bottles can be treated. *Inter alia* page 14-18 of the summary of the invention section outlines the portion of the apparatus and method for sterilizing the outside of the bottles. The sterilizing of the outside, in addition to the inside, of the bottle is significant. As a result, this allows the sterile tunnel apparatus to maintain its level of sterilization. This, in turn, lessens the chance of compromising the sterilization levels of the sterile tunnel configuration. Gies discloses an apparatus that provides measured quantities of sterilant to the *inside* of cups only. Neither Gies nor Olssen disclose sterilizing the outside surfaces of the container as the Examiner has indicated in the Final Office Action. Furthermore, the combination of Poole with Gies and Olssen would require the Examiner to improperly modify the secondary reference to Olssen to teach the outside of a bottle being sterilized. Respectfully, this is improper because the Examiner could continue modifying modified features ad nauseum. Such rejection is improper hindsight. Furthermore, the combination of dairy-type food

packaging of Gies as modified by pharmaceuticals packaging by Olssen and wooden produce baskets by Poole is clearly non-analogous. One of ordinary skill in the art would not be lead to these different fields of endeavor when trying to solve the problem of sterilizing the outside of bottles in aseptic sterilization the inventor was faced with.

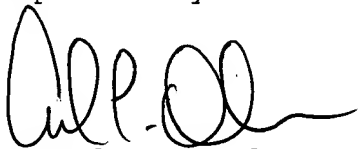
The Examiner submits that reaching the levels of sterilization as specified in Claims 17-19 would be obvious to those skilled in the art because discovering optimal values of result effective variable (i.e. sterilization level) involves only routine skill in the art, *In re Boesch*. There is nothing suggested in the teachings of Gies whereby a certain variable (i.e. sterilization level), or variables (i.e. sterilization level and speed of filling containers), can be adjusted to effect the variable(s) to their optimal level (or increased levels). Nor does Gies disclose how either of these variables can be improved. Those in the art would need to be informed on how to increase those variables rather than by just being told to keep trying. Furthermore, arriving at the claimed invention requires engineering which is more than routine experimentation. *In re Boesch* and *In re Antoine* appear to be related to finding a particular optimal value of a variable from within a given, known, obtainable range of that variable. Respectfully, the Applicants submit that what is disclosed, here in the claims and

specification, is a method that produces values (i.e. sterilization levels and bottle filling rates) that exceed previously obtainable values for those variables when taken in combination.

It is this combination of elements and their limitations when taken in combination that distinguishes the claimed invention over other art. To date, there has been no invention(s), when take alone or in combination, that together discloses the claimed rate of filling of *bottles* for foodstuffs and at the claimed *levels of sterilization*. Accordingly, in view of the above amendments and remarks, Applicants respectfully submit that the claims are allowable. Additionally, Applicants respectfully submit that new claim 35 is allowable, as well. Claim 18 was canceled, thus, the same number of claims are pending.

If the Examiner believes that any further discussion of the invention would be helpful, perhaps in the form of an Examiner's Amendment, Applicants' representative is available at (518) 220-1850, and earnestly solicits such discussion.

Respectfully submitted,



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